UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X

CLIFTON GIBBON,

Plaintiff,

- against -

CITY OF NEW YORK,

Defendant.

----------X

07 Civ. 6698 (NRB)

DECLARATION OF
STUART LICHTEN

STUART LICHTEN hereby declares, under penalty of perjury pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am a member of Schwartz, Lichten & Bright, P.C., the attorneys of record for plaintiff in the above-captioned action. I submit this declaration in opposition to the motion of defendant City of New York for summary judgment.

2. Attached as Exhibit A are excerpts from the deposition of plaintiff.

3. Attached as Exhibit B are medical records for plaintiff dated June 15, 2005, to September 12, 2007.

4. Attached as Exhibit C is a publication of the National Kidney and Urologic Diseases Information Clearinghouse entitled, "Prostate Enlargement: Benign Prostatic Hyperplasia."

5. Attached as Exhibit D are medical records for plaintiff dated February 17 and March 22, 2006.

6. Attached as Exhibit E is a Supplemental Verified Answer and Position Statement dated February 5, 2007, submitted by defendant to the U.S. Equal Employment Opportunity Commission.

7. Attached as Exhibit F are medical records for plaintiff dated June 15, 2006.

8. Attached as Exhibit G is a letter from Barry W. Rubin, M.D., to Stuart Lichten, dated January 30, 2008.

Dated: New York, New York
May 30, 2008

STUART LICHTEN

Exhibit A

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
CLIFTON GIBBON,

PLAINTIFF,

-against-

Case No:
07 CV 6698

CITY OF NEW YORK,

DEFENDANT.
----------X

DATE: January 8, 2008

TIME: 10:26 a.m.

EXAMINATION BEFORE TRIAL of the Plaintiff, CLIFTON GIBBON, taken by the Defendant, pursuant to a Notice and to the Federal Rules of Civil Procedure, held at the offices of Special Federal Litigation, New York City Law Department, 100 Church Street, New York, New York 10007-2601, before Shawn McCline, a Notary Public of the State of New York.

A. No, the test, it's in December, sometime in December.

Q. All the tests or this test specifically?

A. It's this test. This test in December gonna let me know that my prostate was starting to swell because I think I was normal because, you know, that drug test is a thing that I went and I take all the while. I never have any problem with it. So when I went for this test I was the second person in the room for the test. I feel my bowel full with the urine to give them the urine, when I go to the bowl free up myself, the urine just wouldn't come out.

Q. Before we go on talking about this, you have what's marked as Defendant's Exhibit A, okay. Now, this is your -- this is a copy of your Complaint. Have you seen this before?

A. I would have to take a look at it.

Q. It's a copy right in front of you.

(Witness perusing the document.)

A. Yes.

Q. So you've seen this before?

A. Yes.

Q. In this complaint -- Mr. Gibbon, take a moment to review this Complaint, okay.

(Witness perusing the document.)

BY MR. FRIEDMAN:

Q. Mr. Gibbon, is this Complaint accurate?

A. So far, yes.

Q. Is there anything you wish to change?

A. No.

Q. Do you adopt this as your testimony as if it were given here today?

A. Yes.

Q. Do you know when you filed this Complaint?

A. I think in 2007, I'm not sure.

Q. There is a date stamped on the front, July 25, 2007?

A. Yes, that's it.

Q. Is that the date?

A. Yes.

Q. Now, if you look at paragraph No. 10 in the Complaint.

On page three, Mr. Gibbon.

(Witness perusing the document.)

BY MR. FRIEDMAN:

Q. Paragraph ten refers to your inability to provide a urine specimen on February 17, 2006.

Do you see that in paragraph ten? Is that accurate?

A. March 10th.

Q. February 17th?

(Witness perusing the document.)

A. I don't see what you're talking about, man.

BY MR. FRIEDMAN:

Q. Paragraph ten, then it refers to due to Mr. Gibbon's inability to provide urine specimen --

A. Yes, I see it now.

Q. -- on February 17, 2006.

A. Yes.

Q. So you see that?

A. Yes.

Q. Now, do you recall February 17, 2006, that day?

A. To tell the truth I take so much drug tests, you know. To pinpoint it out, it's only one test I really remember in my mind is when I went to take the test when my prostate was swelling, that's the only one definitely I remember to tell you the truth. You see, I take so much.

Q. Was that this test in February? When your prostate was giving you --

When you say your prostate was giving you a problem, was that during this test on February 17, 2006?

A. Yes, must be because I stop work 2006, it must be.

Q. So if you were taking a drug test in February, that would be a drug test before you start working?

A. Yes, before.

Q. So it wasn't a random drug test?

A. No, it's the start of the season, so you've got to

take that test to go back on the job, yes.

Q. So when you showed up on February 17th, did you know that your prostate was giving you problems?

A. Yes, I know because in 2005, December, that's where I really find out that -- I didn't even know that it was my prostate. I went to take that test before and I say I couldn't urinate. So after I leave over there and go back to the yard, I say to myself, I said something is wrong with me.

So I'm affiliated with HIP. My family doctor in HIP. So I call HIP and I make an appointment with my doctor which is Dr. Bharara. And so she give me the appointment date.

So I leave the evening and I go to Dr. Bharara. I say, doc, man, I've been through something very much embarrassing with me, man. I said I have to take a drug test and when I go over to the bowl to urinate, no urine can't come out, me say me bowel is full with the urine.

Q. I'm sorry, what date was this when you -- what day was this when you realized that you had this problem?

A. It was the last time they called me in December, 2005, because the season was coming to a close, right.

And then, now, I went to the doctor that time and when the doctor check me, the doctor told me that my prostate glands did start to swell, that's why the urine cannot come out.

Q. Was that a random test in December?

A. Yes, that was a random test because they just called me from the field.

Q. Now what happened, were you able to give them any urine at all?

A. Yes, I give them urine because the time, I was the second one in the office that day, and I was the last person leave because the person who conduct the test name was Ray Sommers, Ray stay at the office with me until I give -- I go over the bowl and the urine just take time, start to trickle, take time coming out, coming out, until it eventually just build up and start to come out force. And I filled up the container and leave it with Ray.

So that was the time now, I say, I never have -- I never used to have those problems before, so I say there must be a problem, so I said there must be something wrong with me.

Q. That was in December of 2005?

A. Yes, December of 2005.

So now I went to the doctor, the doctor check me and the doctor say, Clifton, your prostate gland started swelling. I said doc, is it serious that I may have to get an operation? The doctor said, no, you don't need an operation, there is medication that can fix that. I feel so glad and joyful because me fraid of the knife.

Q. This was Dr. Bharara?

A. My family doctor.

Q. You went there in December?

A. December 5th. I got to see that doctor practically every month, me have to test me pressure, to get me prescription to pick up me medication. She know me very well. So now she write a prescription and give me now, so I go to the pharmacy and I pick up these tablets they call Flomax, to carry back down the prostate to a normal size, right. Well, I've been taking those tablets, when I just get the tablet and take the tablets, I don't have no problem urinating. I urinate normal. I feel like urinate, me just go to the bathroom, boom, me no stand up in here no long time.

But the time now when I go now to take this test now in 2006, the tablet finish, right. So now me call doctor -- at first Dr. Bharara tell me say Clifton when the tablets is finish and if you still have the problem, I must come back to her and she will send me to a specialist and that specialist will get rid of that problem once and for all.

Q. Do you remember when they finished?

Do you remember when you ran out of the pills?

A. It was about two days, two or three days before me go down in 2006 to get this drug test, so me call.

Q. So that would be about February 14th or 15th?

A. I tell you it's quite a while and I want to tell you the truth, the definite truth, everything I'm telling you, right. It's about two or three days before I go down to take the test to go back to work, right. I realized that the tablets is out.

So now how me get my prescription? All the while I call the doctor. I never get the doctor at that time, me get the doctor receptionist, right. So I tell the receptionist, say, you must do me a favor, tell Dr. Bharara that me tablets, me Flomax tablets is finish and I'm going again for a drug test and I don't want me have a problem urinating or anything like that, so please tell Dr. Bharara. The guy in front say all right, him tell Dr. Bharara, right, but Dr. Bharara never call me back.

Q. So during those two to three days, you know, you ran out of the pills; but before your drug test, were you having problems urinating at home?

A. No. When I'm talking the pill, everything was all right.

Q. After you stopped taking the pills -- you said you ran out of the pills two or three days before the drug test?

A. Yes, I notice, you see when I go into the bathroom when I didn't have the pill, I go into the bathroom and just ready, I gone, but when I run out of the pill --

Q. What do you mean, describe it?

A. You is a man, right? You is a male, right? You go into the bathroom, you pull down your zip, you take out your private, you put it over the bowl, you come, you pee, right out. But when the tablets run out, that's why I call her, when me go in and go now to the bowl to pee, me have to stand up maybe four, five minutes before the urine come out, you know.

And the longer I don't take the tablets, the longer the urine take to come out, you know. So that's the reason why me call Dr. Bharara now to give me the prescription to get the tablets because what I was planning to do, you know, after I get that set of tablets, right, and I go back to work, I was going to go back to Dr. Bharara and tell her say, doc, it seem like the prostate problem is still there. So as you say, you're going to refer me to a specialist, more than likely send me to the specialist now for me to get rid of that problem once and for all.

Q. How many times did you call Dr. Bharara to get the medicine, do you remember?

A. Me call her one time, man, one time because it's the first the medication run out. Me call her one time but she never respond to the call, right. She never -- me never hear back from her until when the City send me to Westbury to them doctor to check me. What really wrong with me. When I was on my way back over now, my phone ring, when I pick it up

it was Dr. Bharara. So me say, doc, me tablets run out and me tell -- I think the receptionist, I think the guy's name Marcus or something like that.

Q. Before we get that far, on February 17th when you went for the test, do you remember what time the test was, during the day, was it the early in the morning, was it in the afternoon?

A. I think it was from 12; from about 11 to 1. I think it was about that, from 11 to 1 at 40 Worth Street.

Q. Before you got to the test, were you at home?

A. Yes, I leave my home and go straight.

Q. Were you able to urinate before you got to the test?

A. Well, tell you, the morning when me wake up, right, and me see I was having problem, you know, to start to urinate. You know, when you wake up in the morning you go to the bathroom, you make a leak before the day, right. That morning I get up, man, I never -- me feel like me want to urinate but me go to the bowl but me never really urinate, me sore of hold it in. That mean when I go down 40 Worth Street to take the test, true me have the whole heap of urine in me and me go, the urine just come out and me just give them the urine and that would be it because me never worry about the drug test because I don't deal with drugs, you understand.

So only thing they can find in that urine is the

pressure tablets or something like that, that's all them can find in the urine, so I never worry about it, so the morning me never urinate at home.

Q. You did or you did not?

A. No, me never urinate at home, me keep it in me.

Q. So when you got to the test, did you tell the person running the test that you were having problems?

A. Yes, Ray Sommers, when I went in the first time --

Q. What do you mean the first time?

A. I went in about four times down at 40 Worth Street. The first time when I went in --

Q. On that same day?

A. On that same day. The first time when I went in and I tried to, you know, to let the urine come out, you know, you alone, don't go in the men's room, a man walk with you, go in there, right. And them time you, them must be give you two or three minutes, I don't remember the direct time, and the guy tell me say your time up. Man, we would go out, back, try again. So when we come out of the bathroom now, Ray Sommers --

Q. So the first time you went in, you weren't able to go?

A. No, but at the same time my bowel full with the urine, you know, it come like down there going tear out, you know, so me come out back, me say, Ray was at her desk

because she supervisor the drug test. Ray is a girl like this, me talk to Ray good, we know each other on the job. Me say Ray, it seem like me have the same problem, you know, like the last drug test what I take with you because the same way me go in there now, Ray, me bowel full with the urine and the urine nah come out. Ray say, all right, go try again, and that day I make about four try. They have some little bottle of water about this high, you know, this long, you know.

Q. You came out with water, this much water?

A. No, the City, at the city them have water.

Q. They gave you water?

A. Yes, they gave you water there, you know, a bottle about this high, long (indicating).

MR. CARBERRY: That about half a litter?

BY MR. FRIEDMAN:

A. About that, you know.

Q. How much would you say, is that a cup, more than a cup, two cups?

A. If it's not a cup, it's little bit more than a cup. So me drink -- when I go in the first time and the urine don't come out. Me drink it, me drink because, you know, that will sort of bill up the urine enough to come out.

Go back the second time, the urine nah come. Me drink it again, the urine nah come.

Go back the fourth time, the last time now me drink it and me stand up in the place, just build, want the urine to come out.

Q. How long were you there?

How long were you waiting --

So after you tried the first time?

A. Yes.

Q. Nothing happen?

A. Nothing happened.

Q. They said here is some water, wait?

A. Yes.

Q. How long did they give you to wait?

A. It depends on me, right. It depends on me. Say, whenever me feel like I want to go, they say all right, whenever you want to go, go back in the men's room. So my bowel is full with urine, right, and me feel like me want to go again. So me go. Me say, look, let's go and try it again, right. We go back in the men's room. The guy come with me, check, him watch. Him say well, all right, Clifton, your time up again.

We go and go until the fourth time now, we drink another bottle of the water, me go in and me wait, wait, wait. Even the guy who come with me, he even give me extra time, you know, say it's a three-minute thing, he would give me four. And him say, you know, come. Me say to Ray, the

same problem me have like the last time me come, you know. Me say Ray, me check me doctor and me doctor say my prostate problem, it started swelling. When it swell, it block the passage for the urine to come out and that is it, right. Ray say, I don't know what to tell you. You know what, Clifton, I'm going to send you to our -- the DOT doctor. I say Ray, I would do anything because I know it's my prostate because my doctor, Dr. Bharara, tell me that before, right, so.

Q. When did this person tell you this?

A. Who?

Q. Who told you to go to the DOT doctor, that you had to go to the DOT doctor?

A. It's Ray -- no, Ray say come, Clifton, I'm going to take you to somebody else. She take me to this other woman, Anna Budd (phonetic).

Q. I'm just trying to understand what the time frame was, was this how many hours after you first got there to 40 Worth Street?

A. I see Anna Budd?

Q. Yes.

A. It's after they say the time frame for the test was from 11 until 1. After I wait out that time, and my time has passed now, Ray take me and Ray say, all right, come, I want you to go see somebody.

So when I look, Anna Budd -- come Anna Budd start

to scope the federal law, tell me say, it's federal law, you've got to take the drug test and this and that. Me say to her, Ms. Budd, look, me say, I'm a law-abiding citizen, man. Me say I'm a middle-age man and a policeman never put handcuff on me, I never commit myself or anything. I say I know that the drug test is a must, you've got to take the test to go back to work, but I say I have a medical problem, I say I have a prostate problem. Me say my doctor at HIP told me that my prostate gland started swelling and I have problem urinating, right. So it's not definitely my fault, me say if I could fix the prostate, I would fix it and give the urine right away.

So them say well, all right, you drive? I said yes, I have a car. Him say well, I'm going to send you to my doctor, my DOT doctor. I say where? Him say Westbury -- no, Westchester. Me say Westchester? Me say I don't know Westchester, you know.

Q. Before you get to that, so you were at 40 Worth Street for a number of hours?

A. Yes.

Q. Were you able to urinate at all?

A. No, I don't urinate in 40 Worth Street at all. You know when I urinate, I actually wet up myself, you know, at Flushing station. After they send me from 40 Worth Street and say I must go to Westchester, me park my car in a parking

lot, a Chineman parking lot in Flushing, right off 41st Avenue near the subway station, right. So me have to come back now to get me car to drive to Westchester.

When I was leaving out of the DOT building now, Ray Summer's was coming out, me say Ray, me feel like the urine going to come out now give me another try, man, make me go give you the urine. Ray say no, no, your time pass. Go on and check the DOT doctor and let we know what's really wrong with you. So me say Ray, me no tell you say me prostate gland already swelling, that's why he can't get the urine. Him say go on, go on. And me say all right.

On my job, any supervisor talk to me or give me an order, I always go through with it, me is a very peaceful guy, me don't give any problem or anything, so me leave now --

Q. Mr. Gibbon, again, I just went to understand your day. So you showed up at 40 Worth Street, you stated about 11:00 in the morning?

A. Yes.

Q. And what time did this person tell you to go to Westchester, do you remember?

A. Well, it must be about 1:15 or 1:30 because I think the drug test was for three hours from 11 until 1 and after my session of the drug test was over, Ray went and call her, and Anna Budd say and Ray Summer's -- when Anna Budd say I

Q. What kind of test is that, it's a prostate test?

A. Yes, a prostate test.

Q. Did they take blood?

A. Yes, they take blood and I give them urine that same day, too. The urine didn't take long, I had to wait about two hours in the men's room to give them the urine, but still I give them blood and I give them urine over there, right.

And I said, Doc, what you see wrong with me? The doctor say, Clifton, your prostate is swelling. I said, Doc, it's serious to where I have to take an operation? The doc say, No. He say, They have medication you can take to bring the prostate to normal. So I said, Well, Doc, that's what my doctor at HIP had tell me. I'm affiliated with HIP, my doctor name Dr. Bharara, tell me that them have medication to bring it down and me say, Doc, she give me Flomax tablets. Doc say, yes, that's the tablets, just keep on taking that tablets and everything will be all right.

And him say anyway, I want some blood from you and I want some urine. I say, Doc, the urine, you can get the urine, you know. But the blood -- me say the blood, you can get the blood, you know, you can draw the blood, but the urine, that's why you have me here. I said I don't sure if the urine will come out. The doctor say, All right, Clifton, go and try. I said, Okay, Doc. Me put on back on me clothes

and she draw the blood and me go in the bathroom.

Man, it's not a pretty nice thing, you know, your bowel full with the urine, you really want to go but the urine just wouldn't come out and me stand up in the bathroom for about maybe hour-and-a-half, you know, at the bowl.

Q. At the doctor's office, you were in the bathroom for about an-hour-and-a-half?

A. Yes, me stand up there long time. Me never time me self but me just estimate it for about that and me stand up at the bowl, man, with me dick out over the bowl with the cup and the urine couldn't come out. It's sort of embarrassing, you know, and the urine couldn't come out.

Q. So it was the -- like the same thing that happen the day before?

A. Yes, at 40 Worth. So now me zip up back me self now but me sort of leave me self free, you know, and relax and as me going towards the door now, me feel like a little something did come out, so me sort of ease up, soon me feel me start to wet up me brief. So me just turn back now zip back down me thing and take it out, it start to tip, just tip, tip until it start to come out force. Me just stretch out me hand and take up the cup off of the face basin and fill up the cup.

If you see the amount what come out, man, it would have filled the cup about six times, because the cup is about

that tall and me just empty the rest in the bowl and me carry the urine and give the nurse it and the same time me give the nurse it, me did want that doctor to call my doctor, Dr. Bharara and them converse because them medical people. Me give that doctor Dr. Bharara name and phone number when she was with me and me give the nurse again, me write down Dr. Bharara phone number and give the nurse and me say remember, give the doctor that.

Me ask the nurse, are you finish with me now? The nurse say yes. So me leave and me come out.

Q. Did you ever find out the results of what they found?

A. That doctor say -- me never see the result, it's Leonard Poletto (phonetic), the other lawyer, he got --

Q. Who?

MR. LICHTEN: Leonard Poletto, that is the union lawyer.

A. Him get the report from Michelle Bonamassa but that report it coincide with my doctor report at HIP, said that the prostate gland was swelling a lot, that's why the urine couldn't come out.

The only difference with my doctor report with Michelle report, my doctor put in it say Clifton will have problem in urinating. That doctor in that report, the doctor never say me will have problem urinating, but my doctor put

in it in say I will have problem in urinating and I'm on Flomax tablets.

BY MR. FRIEDMAN:

Q. Did you go back on to Flomax, did you refill your prescription?

A. Yes, I refill me prescription because it's very embarrassing, man.

Q. Do you remember when you refilled it?

A. On the 18th when I come over, my doctor say, Clifton, come to the front desk. I will leave a prescription for you. Well, from that time, me went and pick up --

Q. You said 18th, you mean 18th of February?

A. Yes, February.

Q. 2006?

A. 2006.

From that time me went and me pick up prescription on the 18th when I come over, right. And me pharmacy is just on Hillside, 169th. Me just come down there, fill the prescription and me just start to take the tablets.

Q. Are you on Flomax now?

A. No, that is from 2006 and now it's 2008, man.

Q. Did you have a surgery or --

A. No, I don't have no surgery.

Q. So what happened to your prostate?

A. Well, I don't know. Well, now maybe it isn't

working that properly or good still because I don't check back me doctor because when I leave -- when they stop me from work they cut me medical, right. They cut everything because for me to go and pick up -- to see the doctor now, I have to pay $94 just to see the doctor, right. And me have to pay again to get me pressure pill, right. So I never go back and see the doctor for him to check me for anything with the -- about me prostate.

Q. When was the last time that you ran out of Flomax pills; do you understand?

A. It's in 2006, man, because from this case been going on, right, me get three refill on the Flomax tablets, right. And that time I wasn't in DOT. The reason why I continue taking the Flomax at that time now, I was expecting that they would call me back, because I say I don't see how them can fire a person who really have a medical problem, right. It's not really my fault I have something like that, it's just the organ -- me prostate swelling.

Q. So you got a new Flomax prescription?

A. Yes.

Q. On February 18, 2006?

A. Yes.

Q. How long did those pills last until?

A. Well, really and truly me never really check the day, you know.

Q. About?
A. About, whenever I have a full one hold about 28 or 29 or 30 tablets. I take one tablet a day.
Q. You said you had three refills?
A. I had three refills.
Q. So you were on Flomax for about three months?
A. After that, yes. I'm not sure, but you can estimate it about that.
Q. Now, after you were done with the Flomax --
So that would be, one month would be to about March 18th, two months would be about April 18th and three months would be about May 18th of 2006?
A. Yes.
Q. Did you get another prescription after that?
A. No, I never go back to her because --
Q. Because you were out of work?
A. Yes. I was definitely out of work and out of money because they wouldn't see me because I have to pay for it.
Q. Now, after you ran out of the Flomax, did your problems urinating come back?
A. Well, it come and goes, you know, because true, now, you know, me don't have any demands to time me self to two- or three-hour time me have to urinate, right. Me would go to the bathroom, man, and me just go to urinate and if it don't come, me just stand up and wait until it come.

Q. How long would you have to stand up and wait?

A. Sometime me go in there it just come, another time it take about two minutes. Another time it takes about four minutes but, you know, it never really affect me that way because, you know, me know definitely doing it for a test or anything like that, me just go in and just urinate just like that.

Q. How would it affect your everyday life, were you able to, you know, do everything you normally do?

A. Yes, it doesn't bother me, right. Because when I'm on the job, right, out in the field cutting and me feel like me want urinate, you know, you have to find a little place where nobody can see you, me go and take out me, you know, to urinate. It no come. Me just fix up back me self and me just start work again. Me feel like me want go again, me go hide again and it no come, me just put up back me -- and me just go work again until eventually me go to go do it, it just come. But when it come, it does come out, plenty just come out one time. Fix up back me self and me gone. It never affect me no time on me work, you know.

MR. FRIEDMAN: Off the record.

(Whereupon, an off-the-record discussion was held.)

(Time noted: 11:57 a.m.)

MR. FRIEDMAN: Back on the record.

Exhibit B

DMR 1A

HEALTH INSURANCE PLAN OF GREATER
ADULT HISTORY AND PHYSICAL EXAM

MRN: 000000165430 DOB: 08/06/50
Old MRN: 10168488501 Sex: M
Patient Name: GIBBON, CLIFTON G
Address: 211-06 46 rd
BAYSIDE, NY 11361
Phone: 718-423-0342 Wk#:
PCP: BHARARA MD, MEENAKSHI
Center: JAMAICA ESTATES MEDICAL OFFICE
Order Phys: BHARARA MD, MEENAKSHI

ADDRESS			
HOME PHONE	BUSINESS PHONE	SEX (M) F	(CIRCLE) (S) M W
OCCUPATION highway repair worker			

HISTORY

Age	Wt.	Ht.	B.P.	Temp.	Pulse
54 yr	202 lbs	5' 6"	120/80	afeb	70/

Chief complaint PE

Present illness PMHx HTN, chol, Predia

Past history PSHx - Bunion; Allergy - Ø; Medi - None

Family history M - CRF on HD, F - Ø

Parents

Siblings - Ø

Notable Diseases - DM grandma grandpa

Systems review

HEENT Ø nasal cong, sneezing.

Cardio-Respiratory Ø CP, SOB, palp

Gastro-Intestinal Ø N, V, abd P

Genito-Urinary - hesitancy (+). No freq, urg

Menses N/A

Neuro-Psych. Ø denies

Bones, Muscles & Joints Ø

Habits Ø smoke - 1/2 PPD, alc - social ØIVDA

Weight Changes Ø

General appearance

Skin nl

Head AT/NC

Eyes PERLA

Ears, nose and throat nl

Neck and thyroid supple

Breasts Ø mass Ø d/c

Chest and Lungs symm CTA

Heart S1 S2 nl

Abdomen soft BS +

Pelvic, genitalia and rectal mildly enlarg.

Skeletal, back and extremities nl

MED0063

Neurological no focal defic

Impression and recommendations: (use back, if necessary)

PE labs reviewed EKG
BPH flomax 0.4 OD
Predia - diet
Smoking cessat - wellbutrin XL 150 qd
all CA's recommended
RTC 3 wk

Return for: Routine chest x-ray ☐ C.B.C. ☐ Urinalysis ☐ Pap ☐ Other ☐ (Specify)

6/1/05

QUEENS-LONG ISLAND MEDICAL GROUP, P.C.

PROGRESS NOTES

MRN: 000000165430 DOB: 08/06/50
Old MRN: 10168488501 Sex: M
Patient Name: GIBBON, CLIFTON G
Address: 211-06 46 rd
BAYSIDE, NY 11361
Phone: 718-423-0342 Wk#:
PCP: BHARARA MD, MEENAKSHI
Center: JAMAICA ESTATES MEDICAL OFFICE
Order Phys: BHARARA MD, MEENAKSHI

DATE	ALL NOTES MUST BE DATED AND SIGNED
NOV 18 2005	MEENAKSHI BHARARA, MD Family Internist
	S: Hesitancy on passing u'a, No frequency, urge nocturia. No complaints of burning or fever. Come for follow up of high blood pressure
	O/E 130/80 70/- 161-
	HENT - AT/NC
	neck - supple JVD ⊖
	CVS - S1S2 ⊕ ∅ murmurs
	resp - clear ∅ wheeze
	P/A - soft, BS ⊕ nontender
	P.R - mildly enlarged prostate
	A/P # 401.9 - cont present med controlled
	# BPH - flomax 0.4 OD adherence
	# reschedule GI.
	RTC 3 mths / sooner as needed
	[signature]

CONTINUE IN REVERSE CHRONOLOGICAL ORDER

QUEENS-LONG ISLAND MEDICAL GROUP, P.C.

3/8/06

To whom it may concern

Re - Mr Clifton Gibbon

This is to state Mr Clifton Gibbon has benign prostatic hyperplasia which causes problems with urination. In case of any questions feel free to call me @ 718 526 6300 ext. 8049

Yours sincerely

M Bharara

M. BHARARA, M.D.
Lic. # 214683
DEA # BB6541836

QUEENS-LONG ISLAND MEDICAL GROUP P.C.

CONSULTANT PROGRESS NOTE

SPECIALTY Urology

MRN: 000000165430 DOB: 08/06/50
Old MRN: 10168488501 Sex: M
Patient Name: GIBBON, CLIFTON G
Address: 211-06 46 RD
BAYSIDE, NY 11361
Phone: 718-423-0342 Wk#:
PCP: BHARARA MD, MEENAKSHI
Center: JAMAICA ESTATES MEDICAL OFFICE
Order Phys: CORUJO MD, MARLENE

PAT / HII / DA / PR

5/12/06 Dr Corujo

DATE

55 yo M c/o ~6 months of urinary hesitancy. (restarted flomax 2-4 week ago) no new stressors or weight change
nocturia 1x — still present despite flomax
urgency / frequency
(+) hesitancy
slow flow / weak flow to start
feels empty post void
steady flow

PE: no acute distress
no flank pain or CVA
ABD obese NDNT, [illegible] by bladder scan
prostate ~ 20 g NT, no nodules, soft, smooth, normal rectal tone
penis equal bilat [illegible] hernias NT
glans clear, [illegible] opened meatus.

Imp: Pt c chronic hx of lower urinary tract symptoms occurring gradually exposed when patient was asked to submit urine drug test (which he has done ~5 years) but found difficulty doing it last request of urine 11/05. PSA [illegible] however not 100% improved c flomax.

(Margin notes: [illegible] — PSA 11/05 — 1.6; CrA 1.71)

Rev. 1/2000 Each note must be dated and signed.

Plan: c UA, C/S, cytology, [illegible] UA; (?) Urodynamics [illegible]

[signature]

White: Medical Record
Yellow: Consultant Copy
Pink: Network Copy

000013

Queens Long Island Medical Group, P. C.

Jamaica Estates Medical Offices
180-05 Hillside Avenue
Jamaica, NY 11432
(718)526-6300

Patient: GIBBON, CLIFTON G.
DOB: 08/06/1950 **MRN:** 000000165430
PCP: , **Enc. Date:** 09/12/2007 12:00PM

Provider of Service: HOU, STEVE M.D.

Reason For Visit
The patient is here for follow up of his hypertension.

Vital Signs
Recorded by SHOU on 12 Sep 2007 01:47 PM
BP:180/110, RUE, Sitting,
HR: 72 b/min, Apical, Normal,
Resp: 12 r/min, Normal.

Chief Complaint
• See Reason For Visit

Active Problems
Acute Pharyngitis (462)
Backache (724.5)
Benign Essential Hypertension (401.1)
Benign Prostatic Hyperplasia (600.00)
Combined Systolic And Diastolic Elevation (401.9)
Familial Combined Hyperlipidemia (272.4)
Feelings Of Urinary Urgency (788.63)
Incomplete Emptying Of Bladder (788.21)
Normal Routine History And Physical Adult (V70.0)
Prediabetes (790.29)
Tingling (Paresthesia) (782.0)
Urinary Frequency Increased (788.41).

HPI
H/O HTN, OFF MED FOR ONE MONTH. WAS FOUND VERY HIGH READING FOR EMPLOYMENT PE. COME TO SEEK MED, HELP

HYPERTENSION:
The patient presents with for follow-up of hypertension.
SYMPTOMS: His symptoms includeheadache.
He denies chest pain, DOE, PND, orthopnea, edema, palpitations, vision changes, fatigue.
--Patient has not been following a reduced sodium diet.
--He is getting adequate exercise.
--Smoking: Yes.
--Alcohol: Yes. occasionally.
Does not take.
He is taking antihypertensive medications correctly.

ROS **MED0008**
Systemic symptoms: No fever and no chills.
Head symptoms: Headache.
Eye symptoms: No eyesight problems.

Exhibit C

National Kidney and Urologic Diseases Information Clearinghouse (NKUDIC)

Prostate Enlargement: Benign Prostatic Hyperplasia

The Prostate Gland

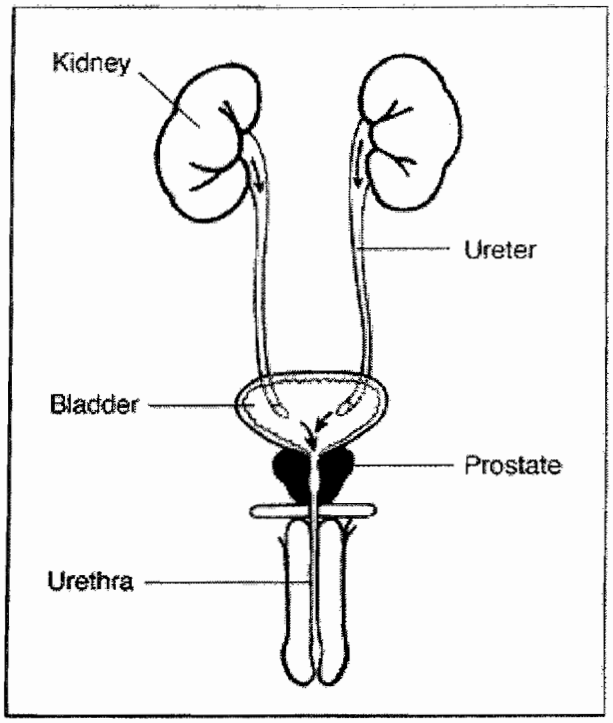
The prostate is a walnut-sized gland that forms part of the male reproductive system. The gland is made of two lobes, or regions, enclosed by an outer layer of tissue. As the diagrams show, the prostate is located in front of the rectum and just below the bladder, where urine is stored. The prostate also surrounds the urethra, the canal through which urine passes out of the body.

Scientists do not know all the prostate's functions. One of its main roles, though, is to squeeze fluid into the urethra as sperm move through during sexual climax. This fluid, which helps make up semen, energizes the sperm and makes the vaginal canal less acidic.

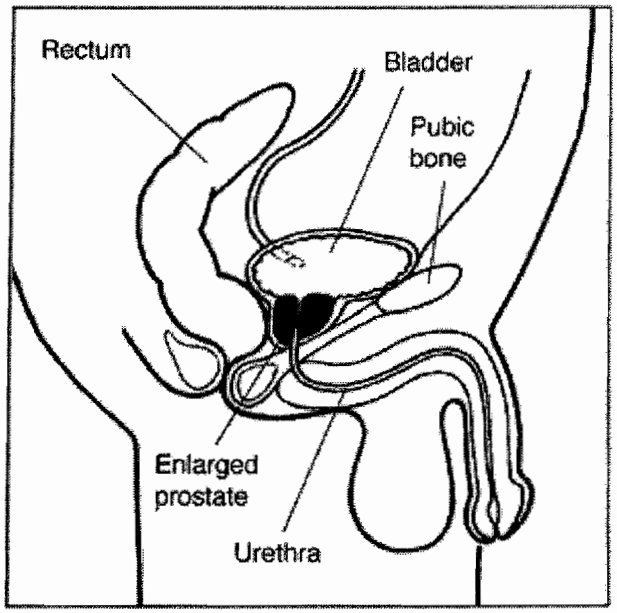
[Top]

Benign Prostatic Hyperplasia: A Common Part of Aging

It is common for the prostate gland to become enlarged as a man ages. Doctors call this condition benign prostatic hyperplasia (BPH), or benign prostatic hypertrophy.



Normal urine flow.



Urine flow with BPH.

As a man matures, the prostate goes through two main periods of growth. The first occurs early in puberty, when the prostate doubles in size. At around age 25, the gland begins to grow again. This second growth phase often results, years later, in BPH.

Though the prostate continues to grow during most of a man's life, the enlargement doesn't usually cause problems until late in life. BPH rarely causes symptoms before

age 40, but more than half of men in their sixties and as many as 90 percent in their seventies and eighties have some symptoms of BPH.

As the prostate enlarges, the layer of tissue surrounding it stops it from expanding, causing the gland to press against the urethra like a clamp on a garden hose. The bladder wall becomes thicker and irritable. The bladder begins to contract even when it contains small amounts of urine, causing more frequent urination. Eventually, the bladder weakens and loses the ability to empty itself, so some of the urine remains in the bladder. The narrowing of the urethra and partial emptying of the bladder cause many of the problems associated with BPH.

Many people feel uncomfortable talking about the prostate, since the gland plays a role in both sex and urination. Still, prostate enlargement is as common a part of aging as gray hair. As life expectancy rises, so does the occurrence of BPH. In the United States in 2000, there were 4.5 million visits to physicians for BPH.

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Why BPH Occurs

The cause of BPH is not well understood. No definite information on risk factors exists. For centuries, it has been known that BPH occurs mainly in older men and that it doesn't develop in men whose testes were removed before puberty. For this reason, some researchers believe that factors related to aging and the testes may spur the development of BPH.

Throughout their lives, men produce both testosterone, an important male hormone, and small amounts of estrogen, a female hormone. As men age, the amount of active testosterone in the blood decreases, leaving a higher proportion of estrogen. Studies done on animals have suggested that BPH may occur because the higher amount of estrogen within the gland increases the activity of substances that promote cell growth.

Another theory focuses on dihydrotestosterone (DHT), a substance derived from testosterone in the prostate, which may help control its growth. Most animals lose their ability to produce DHT as they age. However, some research has indicated that even with a drop in the blood's testosterone level, older men continue to produce and accumulate high levels of DHT in the prostate. This accumulation of DHT may encourage the growth of cells. Scientists have also noted that men who do not produce DHT do not develop BPH.

Some researchers suggest that BPH may develop as a result of "instructions" given to cells early in life. According to this theory, BPH occurs because cells in one section of the gland follow these instructions and "reawaken" later in life. These "reawakened" cells then deliver signals to other cells in the gland, instructing them to grow or making them more sensitive to hormones that influence growth.

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Symptoms

Many symptoms of BPH stem from obstruction of the urethra and gradual loss of bladder function, which results in incomplete emptying of the bladder. The symptoms of BPH vary, but the most common ones involve changes or problems with urination, such as

- a hesitant, interrupted, weak stream
- urgency and leaking or dribbling
- more frequent urination, especially at night

The size of the prostate does not always determine how severe the obstruction or the symptoms will be. Some men with greatly enlarged glands have little obstruction and few symptoms while others, whose glands are less enlarged, have more blockage and greater problems.

Sometimes a man may not know he has any obstruction until he suddenly finds himself unable to urinate at all. This condition, called acute urinary retention, may be triggered by taking over-the-counter cold or allergy medicines. Such medicines contain a decongestant drug, known as a sympathomimetic. A potential side effect of this drug may prevent the bladder opening from relaxing and allowing urine to empty. When partial obstruction is present, urinary retention also can be brought on by alcohol, cold temperatures, or a long period of immobility.

It is important to tell your doctor about urinary problems such as those described above. In eight out of 10 cases, these symptoms suggest BPH, but they also can signal other, more serious conditions that require prompt treatment. These conditions, including prostate cancer, can be ruled out only by a doctor's examination.

Severe BPH can cause serious problems over time. Urine retention and strain on the bladder can lead to urinary tract infections, bladder or kidney damage, bladder stones, and incontinence—the inability to control urination. If the bladder is permanently damaged, treatment for BPH may be ineffective. When BPH is found in its earlier stages, there is a lower risk of developing such complications.

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Diagnosis

You may first notice symptoms of BPH yourself, or your doctor may find that your prostate is enlarged during a routine checkup. When BPH is suspected, you may be referred to a urologist, a doctor who specializes in problems of the urinary tract and the male reproductive system. Several tests help the doctor identify the problem and decide whether surgery is needed. The tests vary from patient to patient, but the following are the most common.

Digital Rectal Examination (DRE)

This examination is usually the first test done. The doctor inserts a gloved finger into

the rectum and feels the part of the prostate next to the rectum. This examination gives the doctor a general idea of the size and condition of the gland.

Prostate-Specific Antigen (PSA) Blood Test

To rule out cancer as a cause of urinary symptoms, your doctor may recommend a PSA blood test. PSA, a protein produced by prostate cells, is frequently present at elevated levels in the blood of men who have prostate cancer. The U.S. Food and Drug Administration (FDA) has approved a PSA test for use in conjunction with a digital rectal examination to help detect prostate cancer in men who are age 50 or older and for monitoring men with prostate cancer after treatment. However, much remains unknown about the interpretation of PSA levels, the test's ability to discriminate cancer from benign prostate conditions, and the best course of action following a finding of elevated PSA.

A fact sheet titled "The Prostate-Specific Antigen (PSA) Test: Questions and Answers " can be found on the National Cancer Institute website at www.cancer.gov/cancertopics/factsheet/Detection/PSA.

Rectal Ultrasound and Prostate Biopsy

If there is a suspicion of prostate cancer, your doctor may recommend a test with rectal ultrasound. In this procedure, a probe inserted in the rectum directs sound waves at the prostate. The echo patterns of the sound waves form an image of the prostate gland on a display screen. To determine whether an abnormal-looking area is indeed a tumor, the doctor can use the probe and the ultrasound images to guide a biopsy needle to the suspected tumor. The needle collects a few pieces of prostate tissue for examination with a microscope.

Urine Flow Study

Your doctor may ask you to urinate into a special device that measures how quickly the urine is flowing. A reduced flow often suggests BPH.

Cystoscopy

In this examination, the doctor inserts a small tube through the opening of the urethra in the penis. This procedure is done after a solution numbs the inside of the penis so all sensation is lost. The tube, called a cystoscope, contains a lens and a light system that help the doctor see the inside of the urethra and the bladder. This test allows the doctor to determine the size of the gland and identify the location and degree of the obstruction.

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Treatment

Men who have BPH with symptoms usually need some kind of treatment at some time. However, a number of researchers have questioned the need for early

treatment when the gland is just mildly enlarged. The results of their studies indicate that early treatment may not be needed because the symptoms of BPH clear up without treatment in as many as one-third of all mild cases. Instead of immediate treatment, they suggest regular checkups to watch for early problems. If the condition begins to pose a danger to the patient's health or causes a major inconvenience to him, treatment is usually recommended.

Since BPH can cause urinary tract infections, a doctor will usually clear up any infection with antibiotics before treating the BPH itself. Although the need for treatment is not usually urgent, doctors generally advise going ahead with treatment once the problems become bothersome or present a health risk.

The following section describes the types of treatment that are most commonly used for BPH.

Drug Treatment

Over the years, researchers have tried to find a way to shrink or at least stop the growth of the prostate without using surgery. The FDA has approved six drugs to relieve common symptoms associated with an enlarged prostate.

Finasteride (Proscar), FDA-approved in 1992, and dutasteride (Avodart), FDA-approved in 2001, inhibit production of the hormone DHT, which is involved with prostate enlargement. The use of either of these drugs can either prevent progression of growth of the prostate or actually shrink the prostate in some men.

The FDA also approved the drugs terazosin (Hytrin) in 1993, doxazosin (Cardura) in 1995, tamsulosin (Flomax) in 1997, and alfuzosin (Uroxatral) in 2003 for the treatment of BPH. All four drugs act by relaxing the smooth muscle of the prostate and bladder neck to improve urine flow and to reduce bladder outlet obstruction. The four drugs belong to the class known as alpha blockers. Terazosin and doxazosin were developed first to treat high blood pressure. Tamsulosin and alfuzosin were developed specifically to treat BPH.

The Medical Therapy of Prostatic Symptoms (MTOPS) Trial, supported by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), recently found that using finasteride and doxazosin together is more effective than using either drug alone to relieve symptoms and prevent BPH progression. The two-drug regimen reduced the risk of BPH progression by 67 percent, compared with 39 percent for doxazosin alone and 34 percent for finasteride alone.

Minimally Invasive Therapy

Because drug treatment is not effective in all cases, researchers in recent years have developed a number of procedures that relieve BPH symptoms but are less invasive than conventional surgery.

Transurethral microwave procedures. In 1996, the FDA approved a device that uses microwaves to heat and destroy excess prostate tissue. In the procedure called

transurethral microwave thermotherapy (TUMT), the device sends computer-regulated microwaves through a catheter to heat selected portions of the prostate to at least 111 degrees Fahrenheit. A cooling system protects the urinary tract during the procedure.

The procedure takes about 1 hour and can be performed on an outpatient basis without general anesthesia. TUMT has not been reported to lead to erectile dysfunction or incontinence.

Although microwave therapy does not cure BPH, it reduces urinary frequency, urgency, straining, and intermittent flow. It does not correct the problem of incomplete emptying of the bladder. Ongoing research will determine any long-term effects of microwave therapy and who might benefit most from this therapy.

Transurethral needle ablation. Also in 1996, the FDA approved the minimally invasive transurethral needle ablation (TUNA) system for the treatment of BPH.

The TUNA system delivers low-level radiofrequency energy through twin needles to burn away a well-defined region of the enlarged prostate. Shields protect the urethra from heat damage. The TUNA system improves urine flow and relieves symptoms with fewer side effects when compared with transurethral resection of the prostate (TURP). No incontinence or impotence has been observed.

Water-induced thermotherapy. This therapy uses heated water to destroy excess tissue in the prostate. A catheter containing multiple shafts is positioned in the urethra so that a treatment balloon rests in the middle of the prostate. A computer controls the temperature of the water, which flows into the balloon and heats the surrounding prostate tissue. The system focuses the heat in a precise region of the prostate. Surrounding tissues in the urethra and bladder are protected. Destroyed tissue either escapes with urine through the urethra or is reabsorbed by the body.

High-intensity focused ultrasound. The use of ultrasound waves to destroy prostate tissue is still undergoing clinical trials in the United States. The FDA has not yet approved high-intensity focused ultrasound.

Surgical Treatment

Most doctors recommend removal of the enlarged part of the prostate as the best long-term solution for patients with BPH. With surgery for BPH, only the enlarged tissue that is pressing against the urethra is removed; the rest of the inside tissue and the outside capsule are left intact. Surgery usually relieves the obstruction and incomplete emptying caused by BPH. The following section describes the types of surgery that are used.

Transurethral surgery. In this type of surgery, no external incision is needed. After giving anesthesia, the surgeon reaches the prostate by inserting an instrument through the urethra.

A procedure called transurethral resection of the prostate (TURP) is used for 90

percent of all prostate surgeries done for BPH. With TURP, an instrument called a resectoscope is inserted through the penis. The resectoscope, which is about 12 inches long and 1/2 inch in diameter, contains a light, valves for controlling irrigating fluid, and an electrical loop that cuts tissue and seals blood vessels.

During the 90-minute operation, the surgeon uses the resectoscope's wire loop to remove the obstructing tissue one piece at a time. The pieces of tissue are carried by the fluid into the bladder and then flushed out at the end of the operation.

Most doctors suggest using TURP whenever possible. Transurethral procedures are less traumatic than open forms of surgery and require a shorter recovery period. One possible side effect of TURP is retrograde, or backward, ejaculation. In this condition, semen flows backward into the bladder during climax instead of out the urethra.

Another surgical procedure is called transurethral incision of the prostate (TUIP). Instead of removing tissue, as with TURP, this procedure widens the urethra by making a few small cuts in the bladder neck, where the urethra joins the bladder, and in the prostate gland itself. Although some people believe that TUIP gives the same relief as TURP with less risk of side effects such as retrograde ejaculation, its advantages and long-term side effects have not been clearly established.

Open surgery. In the few cases when a transurethral procedure cannot be used, open surgery, which requires an external incision, may be used. Open surgery is often done when the gland is greatly enlarged, when there are complicating factors, or when the bladder has been damaged and needs to be repaired. The location of the enlargement within the gland and the patient's general health help the surgeon decide which of the three open procedures to use.

With all the open procedures, anesthesia is given and an incision is made. Once the surgeon reaches the prostate capsule, he or she scoops out the enlarged tissue from inside the gland.

Laser surgery. In March 1996, the FDA approved a surgical procedure that employs side-firing laser fibers and Nd: YAG lasers to vaporize obstructing prostate tissue. The doctor passes the laser fiber through the urethra into the prostate using a cystoscope and then delivers several bursts of energy lasting 30 to 60 seconds. The laser energy destroys prostate tissue and causes shrinkage. As with TURP, laser surgery requires anesthesia and a hospital stay. One advantage of laser surgery over TURP is that laser surgery causes little blood loss. Laser surgery also allows for a quicker recovery time. But laser surgery may not be effective on larger prostates. The long-term effectiveness of laser surgery is not known.

Newer procedures that use laser technology can be performed on an outpatient basis.

Photoselective vaporization of the prostate (PVP). PVP uses a high-energy laser to destroy prostate tissue and seal the treated area.

Interstitial laser coagulation. Unlike other laser procedures, interstitial laser

coagulation places the tip of the fiberoptic probe directly into the prostate tissue to destroy it.

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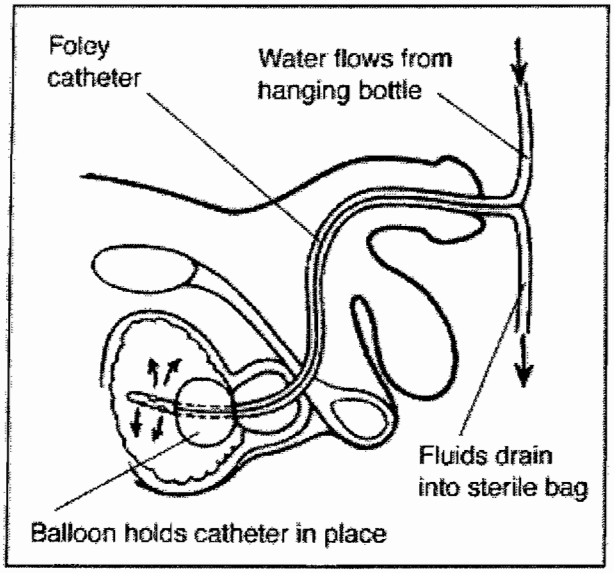
Your Recovery After Surgery in the Hospital

The amount of time you will stay in the hospital depends on the type of surgery you had and how quickly you recover.



Foley catheter

At the end of surgery, a special catheter is inserted through the opening of the penis to drain urine from the bladder into a collection bag. Called a Foley catheter, this device has a water-filled balloon on the end that is put in the bladder, which keeps it in place.

This catheter is usually left in place for several days. Sometimes, the catheter causes recurring painful bladder spasms the day after surgery. These spasms may be difficult to control, but they will eventually disappear.

You may also be given antibiotics while you are in the hospital. Many doctors start giving this medicine before or soon after surgery to prevent infection. However, some recent studies suggest that antibiotics may not be needed in every case, and your doctor may prefer to wait until an infection is present to give them.

After surgery, you will probably notice some blood or clots in your urine as the wound starts to heal. If your bladder is being irrigated (flushed with water), you may notice that your urine becomes red once the irrigation is stopped. Some bleeding is normal, and it should clear up by the time you leave the hospital. During your recovery, it is important to drink a lot of water (up to 8 cups a day) to help flush out the bladder and speed healing.

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Do's and Don'ts

Take it easy the first few weeks after you get home. You may not have any pain, but you still have an incision that is healing—even with transurethral surgery, where the incision can't be seen. Since many people try to do too much at the beginning and then have a setback, it is a good idea to talk with your doctor before resuming your normal routine. During this initial period of recovery at home, avoid any straining or sudden movements that could tear the incision. Here are some guidelines:

- Continue drinking a lot of water to flush the bladder.
- Avoid straining when having a bowel movement.
- Eat a balanced diet to prevent constipation. If constipation occurs, ask your doctor if you can take a laxative.
- Don't do any heavy lifting.
- Don't drive or operate machinery.

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Getting Back to Normal After Surgery

Even though you should feel much better by the time you leave the hospital, it will probably take a couple of months for you to heal completely. During the recovery period, the following are some common problems that can occur.

Problems Urinating

You may notice that your urinary stream is stronger right after surgery, but it may take awhile before you can urinate completely normally again. After the catheter is removed, urine will pass over the surgical wound on the prostate, and you may initially have some discomfort or feel a sense of urgency when you urinate. This problem will gradually lessen, and after a couple of months you should be able to urinate less frequently and more easily.

Incontinence

As the bladder returns to normal, you may have some temporary problems controlling urination, but long-term incontinence rarely occurs. Doctors find that the longer problems existed before surgery, the longer it takes for the bladder to regain its full function after the operation.

Bleeding

In the first few weeks after transurethral surgery, the scab inside the bladder may loosen, and blood may suddenly appear in the urine. Although this can be alarming, the bleeding usually stops with a short period of resting in bed and drinking fluids. However, if your urine is so red that it is difficult to see through or if it contains clots or if you feel any discomfort, be sure to contact your doctor.

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Sexual Function After Surgery

Many men worry about whether surgery for BPH will affect their ability to enjoy sex. Some sources state that sexual function is rarely affected, while others claim that it can cause problems in up to 30 percent of cases. However, most doctors say that even though it takes awhile for sexual function to return fully, with time, most men are able to enjoy sex again.

Complete recovery of sexual function may take up to 1 year, lagging behind a person's general recovery. The exact length of time depends on how long after symptoms appeared that BPH surgery was done and on the type of surgery. Following is a summary of how surgery is likely to affect the following aspects of sexual function.

Erections

Most doctors agree that if you were able to maintain an erection shortly before surgery, you will probably be able to have erections afterward. Surgery rarely causes a loss of erectile function. However, surgery cannot usually restore function that was lost before the operation.

Ejaculation

Although most men are able to continue having erections after surgery, a prostate procedure frequently makes them sterile (unable to father children) by causing a condition called retrograde ejaculation or dry climax.

During sexual activity, sperm from the testes enters the urethra near the opening of the bladder. Normally, a muscle blocks off the entrance to the bladder, and the semen is expelled through the penis. However, the coring action of prostate surgery cuts this muscle as it widens the neck of the bladder. Following surgery, the semen takes the path of least resistance and enters the wider opening to the bladder rather than being expelled through the penis. Later it is harmlessly flushed out with urine. In some cases, this condition can be treated with a drug called pseudoephedrine, found in many cold medicines, or imipramine. These drugs improve muscle tone at the bladder neck and keep semen from entering the bladder.

Orgasm

Most men find little or no difference in the sensation of orgasm, or sexual climax, before and after surgery. Although it may take some time to get used to retrograde ejaculation, you should eventually find sex as pleasurable after surgery as before.

Many people have found that concerns about sexual function can interfere with sex as much as the operation itself. Understanding the surgical procedure and talking over any worries with the doctor before surgery often help men regain sexual function earlier. Many men also find it helpful to talk with a counselor during the adjustment

period after surgery.

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Is Further Treatment Needed?

In the years after your surgery, it is important to continue having a rectal examination once a year and to have any symptoms checked by your doctor.

Since surgery for BPH leaves behind a good part of the gland, it is still possible for prostate problems, including BPH, to develop again. However, surgery usually offers relief from BPH for at least 15 years. Only 10 percent of the men who have surgery for BPH eventually need a second operation for enlargement. Usually these are men who had the first surgery at an early age.

Sometimes, scar tissue resulting from surgery requires treatment in the year after surgery. Rarely, the opening of the bladder becomes scarred and shrinks, causing obstruction. This problem may require a surgical procedure similar to transurethral incision (see section on Surgical Treatment). More often, scar tissue may form in the urethra and cause narrowing. The doctor can solve this problem during an office visit by stretching the urethra.

Prostatic Stents

A stent is a small device that is inserted through the urethra to the narrowed area and allowed to expand, like a spring. The stent pushes back the prostatic tissue, widening the urethra. It is designed to relieve urinary obstruction in men and improve the ability to urinate. The device is approved for use in men for whom other standard surgical procedures to correct urinary obstruction have failed.

BPH and Prostate Cancer: No Apparent Relation

Although some of the signs of BPH and prostate cancer are the same, having BPH does not seem to increase the chances of getting prostate cancer. Nevertheless, a man who has BPH may have undetected prostate cancer at the same time or may develop prostate cancer in the future. For this reason, the National Cancer Institute and the American Cancer Society recommend that all men over 40 have a rectal examination once a year to screen for prostate cancer.

After BPH surgery, the tissue removed is routinely checked for hidden cancer cells. In about one out of 10 cases, some cancer tissue is found, but often it is limited to a few cells of a nonaggressive type of cancer, and no treatment is needed.

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Hope through Research

The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) was established by Congress in 1950 as one of the National Institutes of Health (NIH),

whose mission is to improve human health through biomedical research. NIH is the research branch of the U.S. Department of Health and Human Services.

The NIDDK conducts and supports a variety of research in diseases of the kidney and urinary tract. Much of the research targets disorders of the lower urinary tract, including BPH, urinary tract infection, interstitial cystitis, urinary obstruction, prostatitis, and urinary stones. The knowledge gained from these studies is advancing scientific understanding of why BPH develops and may lead to improved methods of diagnosing and treating prostate enlargement. One such study was the MTOPS Trial, which ended in 2003. The results are summarized above under the Drug Treatment section.

[Top]

Additional Reading

American Urological Association. Guideline on the management of benign prostatic hyperplasia: Chapter 1: Diagnosis and treatment recommendations. *The Journal of Urology.* 2003;170(2 Pt 1):530–537.

National Cancer Institute. The prostate-specific antigen (PSA) test: Questions and answers. www.cancer.gov/cancertopics/factsheet/Detection/PSA. Reviewed August 17, 2004.

[Top]

Glossary

Anesthesia: A substance that prevents pain from being felt, given before an operation.

Anus: The opening of the rectum where solid waste leaves the body.

Bladder: The muscular bag in the lower abdomen where urine is stored.

Catheter: A tube inserted through the penis to the bladder in order to drain urine from the body.

Cystoscope: A tube-like instrument used to view the interior of the bladder.

Ejaculation: Discharging semen from the penis during sexual climax.

Gland: An organ that makes and releases substances to other parts of the body.

Hormone: A substance that stimulates the function of a gland.

Impotent: Unable to have an erection.

Incontinence: The inability to control urination.

Obstruction: A clog or blockage that prevents liquid from flowing easily.

Rectum: The last part of the large intestine (colon) ending in the anus.

Reproductive system: The bodily systems that allow men and women to have children.

Scrotum: The sac of skin that contains the testes.

Semen: The fluid, containing sperm, which comes out of the penis during sexual excitement.

Sterile: Unable to father children.

Testes: The male reproductive glands where sperm are produced.

Ultrasound: A type of test in which sound waves too high to hear are aimed at a structure to produce an image of it.

Urinary tract: The path that urine takes as it leaves the body. It includes the kidneys, ureters, bladder, and urethra.

Urination: Discharge of liquid waste from the body.

Urethra: The canal inside the penis that urine passes through as it leaves the body.

[Top]

National Kidney and Urologic Diseases Information Clearinghouse

3 Information Way
Bethesda, MD 20892–3580
Phone: 1–800–891–5390
Fax: 703–738–4929
Email: nkudic@info.niddk.nih.gov
Internet: www.kidney.niddk.nih.gov/

The National Kidney and Urologic Diseases Information Clearinghouse (NKUDIC) is a service of the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK). The NIDDK is part of the National Institutes of Health of the U.S. Department of Health and Human Services. Established in 1987, the Clearinghouse

provides information about diseases of the kidneys and urologic system to people with kidney and urologic disorders and to their families, health care professionals, and the public. The NKUDIC answers inquiries, develops and distributes publications, and works closely with professional and patient organizations and Government agencies to coordinate resources about kidney and urologic diseases.

Publications produced by the Clearinghouse are carefully reviewed by both NIDDK scientists and outside experts.

NIH Publication No. 07–3012
June 2006

The NKUDIC Clearinghouse is a service of the National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health

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3 Information Way
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Fax: 703–738–4929
Email: nkudic@info.niddk.nih.gov

Exhibit D

:ENS-LONG ISLAND MEDICAL GROUP, P.C.

PROGRESS NOTES

MRN: 000000165430 DOB [illegible]
Old MRN 10168488501 Sex: M
Patient Name: GIBBON, CLIFTON C
Address 211-06 46 RD
BAYSIDE, NY 11361
Phone 718-423-0342 WK#
PCP: BHARARA MD, MEENAKSHI
Center JAMAICA ESTATES MEDICAL [illegible]
Order Phys. BHARARA MD, MEENAKSHI

D.

Gibbon, Clifton

DATE	ALL NOTES MUST BE DATED AND SIGNED
3/22/06	Pt called & s/w me. As per pt he had gone for a drug test once last month & was unable to give urine for drug screen. As per pt he was not taking flomax because he didn't have medical coverage. I gave him a new prescription of flomax last month & since then he has no problems urinating. He wants a letter from me to explain the above situation so that he could have another opportunity to do a drug screen. Note written
	[signature]

MED0049

CONTINUE IN REVERSE CHRONOLOGICAL ORDER

Queens-Long Island
Medical Group, P.C.
Caring for our community.

IMPORTANT MESSAGE

For Bharara Date 2/17/06 Time ______ A.M. P.M.

M Gibbon, Clifton 8/5/1950

of ______

Phone ☐ FAX ☐ MOBILE 718-290-7134 (AREA CODE / NUMBER / EXTENSION)

Message Pt having problems urinating work for DOT, needs drug test being referred to another doctor Pt has no coverage because he is a temp worker. Coverage resumes in March.

Signed ______ (DG)

CALLED
RETURNED YOUR CALL
PLEASE CALL
WILL CALL BACK
WANTS TO SEE YOU
CAME TO SEE YOU

OfficeMax OM97302

****

Medical Assistant or Clerk must sign the message and all lines are to be filled out.

There is no such thing as test results "WHAT TEST"

There is no such thing as prescription refill "WHAT PRESCRIPTION, AMOUNT, DOSAGE"

MRN: 000000165430 DOB 08 05 50
Old MRN: 1016848850 Sex M
Patient Name: GIBBON, CLIFTON G
Address: 211-06 46 RD
BAYSIDE NY 11361
Phone 718-423-0342 Wk#
PCP [redacted]
Center JAMAICA ESTATES MEDICAL OFFICE

M. Bharara

MED0052

Physicians Note: left message to call back
2/17 left message about UCC & ER
2/18/06
MB
2/18 S/w pt prescribed 30 x 2R
0.4 mg flomax
MB

Signature: ______ **M.D.**

Exhibit E

UNITED STATES EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION
----------x

CLIFTON GIBBON,

Complainant,

- against -

NYC DEPARTMENT of TRANSPORTATION,

Respondents

Charge No.
520-2007-00749

SUPPLEMENTAL VERIFIED ANSWER AND POSITION STATEMENT

----------x

Respondents the New York City Department of Transportation ("DOT"), by and through its Division of Personnel, answers the complaint of Clifton Gibbon, upon information and belief, as follows:

1. Deny the allegations set forth throughout the complaint.

POSITION STATEMENT

DOT denies discriminating against Mr. Gibbon on the basis of a disability. Complainant was a seasonal employee who failed to successfully complete a federally mandated pre-employment drug test, which was a condition of employment. Furthermore, it is irrelevant whether or not complainant has been diagnosed with the condition stated in his complaint. Even if he has been so diagnosed, the diagnosis does not provide an adequate explanation for his failure to provide an adequate urine sample for the purpose of drug testing pursuant to federal guidelines. As he did not meet the qualifications for his job, DOT was precluded pursuant to federal regulations from hiring him for the paving season for which he applied.

Mr. Gibbon was a seasonal Assistant City Highway Repairer ("ACHR") who failed to successfully complete a pre-employment drug test issued pursuant to the Code of Federal Regulations. The title of ACHR is considered "safety-sensitive" as defined in the Code of Federal Regulations.[1] Drug testing is required for safety-sensitive employees, including those within the title formerly held by Mr. Gibbon. ACHR's, paid on an hourly basis, are appointed to seasonal positions for the period of the highway paving season which is chargeable to the City's capital budget ("IFA paving season") and runs from March to December. Seasonal ACHR's who complete five successive IFA paving seasons are converted to full-time status within the title of ACHR.

At the conclusion of their seasonal appointments, ACHR's are "terminated" (pursuant to the language of the Memorandum of Agreement, Seasonal Appointments to ACHR

[1] 49 CFR 382.107 states when safety-sensitive functions are performed: "all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. The title ACHR is considered safety-sensitive as it requires a commercial driver's license.

Positions, attached as Exhibit "A"). Seasonal ACHR's terminated at the end of the IFA paving season have preference over new hires in filling vacancies to seasonal positions in the next IFA paving season. A pre-employment drug test is required at the beginning of each season as a part of the application process. Federal regulations require successful completion of a pre-employment drug screening with a negative result before one is assigned to a safety-sensitive position. If a seasonal ACHR does not successfully complete pre-employment drug testing, he has failed to meet the qualifications for the position pursuant to federal regulations.

Pre-employment drug testing takes place pursuant to the procedures set forth in 49 CFR Part 40. Gibbon was directed for testing on February 15, 2006 and did not provide an adequate sample, as described in federal workplace drug testing regulations. The collector asked complainant for a urine sample which, pursuant to 49 CFR 40.63(d) (attached as Exhibit "B"), must measure at least 45 milliliters in order to be considered a valid sample. 45 millileters is the equivalent of approximately three tablespoons of liquid; the human body produces 60 to 100 millileters of urine per hour.

49 CFR 193(b), attached as Exhibit "C", outlines the procedures to be followed by a collector if an individual does not provide an adequate amount of urine for a drug test, and the collector in this instance took the requisite steps. Specifically, according to the statement of collector Lorenzo Robinson, attached as Exhibit "D", the collector advised complainant that he was required to remain in the collection area, and that he had three hours to provide an adequate sample. The complainant was given water to drink, in accordance with federal regulations. Though Mr. Gibbon produced two additional samples, neither yielded the minimum required under the federal mandate.

Federal regulations also define what circumstances constitute a refusal to take a DOT drug test and the resulting consequences, which are the same as for a positive test. This is deemed as a refusal to test. Based upon this regulatory framework, it is clear that Mr. Gibbon's actions constitute a refusal to test.

49 CFR 40.191(a)(5), attached as Exhibit "E", states that an individual has refused to take a drug test if he fails to provide a sufficient amount of urine when directed, and it has been determined through a required medical evaluation that there was no adequate medical explanation for this failure. Both circumstances apply in this instance. The collector did not receive a sufficient sample from complainant after waiting for the required three hour time frame. If an individual has not provided a sufficient sample – at least 45 milliliters - within three hours of the first unsuccessful attempt, the collector must discontinue the collection.

Pursuant to 49 CFR 40.191, an individual who refuses to take a drug test incurs the consequences specified under U.S. DOT agency regulations for a violation of those DOT agency regulations. New York City DOT's policy provides that a refusal to test is deemed a positive test. See New York City Department of Transportation Controlled Substance and Alcohol Abuse Policy for Holders of a Commercial Driver's License ("CDL"), attached as Exhibit "F." As a result of his positive test, Mr. Gibbon was not qualified to return to DOT as a seasonal ACHR.

Under 40 CFR 193, if an individual does not provide sufficient urine for a test, the Designated Employee Representative ("DER"), after consulting with the Medical Review Officer ("MRO"), must direct the individual to obtain a medical evaluation regarding his failure to provide a sufficient specimen. The MRO must be a licensed physician with

clinical experience with controlled substances abuse disorders who must complete continuing education requirements. The title also requires certification by a nationally-recognized MRO certification board. Among the many responsibilities of the MRO, he must act as an independent and impartial "gatekeeper" and advocate for the accuracy and integrity of the drug testing process, provide quality assurance review of the drug testing process for specimens under his purview, and determine whether legitimate medical explanations exist for confirmed positive, adulterated, substituted, and invalid drug test results from the laboratory." 49 CFR 40.123.

The Medical Review Officer Handbook, 8th Edition is a comprehensive publication providing MRO's with current and reliable information regarding generally accepted practices and technical information on all aspects of drug and alcohol testing procedures. It is compiled by the American Association of Medical Review Officers, an organization which establishes national standards and certification of medical practitioners in the field of drug and alcohol testing. The Handbook discusses the medical evaluation of "shy bladder" and examines whether certain conditions would be likely to prevent an individual from providing a urine specimen. Theodore F. Shults, M.D., J.D., Medical Review Officer Handbook, 8th Edition, Quadrangle Research LLC, 8th ed. 2002, p. 211. According to the Handbook, "even individuals with obstructions of the urinary tract – e.g., a male with an enlarged prostate – produce normal urine output and should be able to produce a 45 milliliter specimen within three hours of request." The Medical Review Officer Handbook also states the following:

> it is presumed that normal individuals, producing the usual amount of human urine (1,500 to 2,500 milliliters per day or 60 to 100 milliliters per hour), should be able to provide a specimen volume of 45 millileters

> within 3 hours, especially when given a fluid challenge (40 ounces – or 1200 millileters – of fluid).

Medical Review Officer Handbook, pg. 210. According to a letter from Jeffrey Altholz, M.D. to DOT's DER dated February 24, 2006, attached as Exhibit "G", the complainant was evaluated at Westchester Medical Care PLLC on February 17, 2006. Dr. Altholz was the MRO in this matter. The purpose of the evaluation was to determine whether an acceptable medical explanation existed for complainant's inability to provide a sufficient specimen within the required three hour time frame on February 15, 2006. Dr. Altholz reviewed the clinical information from the medical evaluation and concluded that no valid medical explanation was offered by complainant and that his failure to test was a refusal. Complainant was notified on March 10, 2006 via letter (attached as Exhibit "H") that DOT found him not qualified and that the decision could be appealed by his physician. In fact, complainant's own physician, after learning of the three hour time period and that Mr. Gibbon drank a certain quantity of water, informed DOT that his condition would not have prevented him from providing an adequate sample pursuant to federal regulations.

Given the amount of urine produced by the human body on an hourly basis, a request to produce 45 millileters – the equivalent of approximately three tablespoons of liquid – is not a burdensome one. This is further supported by the results of Mr. Gibbon's medical evaluation. Among the variety of tests performed, blood tests determined that his kidney function was normal.

Dr. Altholz elected to review a second letter received from a physician purporting to explain Mr. Gibbon's inability to provide a specimen for drug testing. On March 23, 2006, Dr. Altholz forwarded a second conclusion to the DER, attached as Exhibit "I",

again stating that no valid medical explanation meeting the standards set forth by federal regulations was offered by the physician.

Mr. Gibbon's refusal to test, as determined by the MRO, was the equivalent of a positive test result under the CFR and carries the same consequences. The MRO's determination that no valid medical reason existed for his inability to provide a sufficient urine sample resulted in DOT finding that complainant was not qualified to return as a seasonal ACHR. DOT notified complainant of this finding via letter dated March 31, 2006, attached as Exhibit "J."

DOT had a valid, non-discriminatory reason for not hiring Mr. Gibbon for a seasonal position. Because he did not successfully complete the required pre-employment drug test, Mr. Gibbon failed to meet the qualifications for the seasonal ACHR position. Federal regulations precluded the Agency from hiring him. Accordingly, his complaint should be dismissed.

WHEREFORE, respondents respectfully request that the complaint be dismissed in its entirety, with prejudice.

Dated: New York, New York
February 5, 2007

New York City Department of Transportation
Division of Personnel
40 Worth Street, 8th Floor
New York, NY 10013

By: _____
Jean Frankowski
Director of Personnel

EOC00067

Exhibit F

QUEENS-LONG ISLAND MEDICAL GROUP, P.C.

CONSULTANT PROGRESS NOTE

SPECIALTY: Urology

MRN: 000000165430 DOB: 08/06/50
Old MRN: 10168488501 Sex: M
Patient Name: GIBBON, CLIFTON G
Address: 211-06 46 RD
BAYSIDE, NY 11361
Phone: 718-423-0342 Wk#:
PCP: BHARARA MD, MEENAKSHI
Center: JAMAICA ESTATES MEDICAL OFFICE
Order Phys: CORUJO MD, MARLENE

DATE	
10/18/06	Pt. is self pay
	Also pt Urodynamics procedure including cost as informed by office manager
	Discussed patient that test will document voiding dysfunction if related to BPH versus poor bladder contractility
	Given that the 2x patient reports two episodes (once @ [illegible] and second at Westchester Medical) where he was not on Flomax and unable to do fine urine [illegible], my recommendation to patient is to restart Flomax and fine urine [illegible] while on it for about 2-4 weeks.
U/A	If patient is still unable to void or [illegible], Urodynamics can be performed to determine if this is due to bladder outlet obstruction from BPH, poor bladder contractility or maybe pelvic floor dysfunction/spasm.
SI 3/06 ~ 1.0 or [illegible]	
PSA 2.17 [illegible]	
	Plan: Flu Cor and PSA ~ 6 months given [illegible] from value in 11/05

Rev. 1/2000 Each note must be dated and signed. [signature] Corujo

000014

White: Medical Record
Yellow: Consultant Copy
Pink: Network Copy

Exhibit G

(718) 638-2222 Fax (718) 638-2219

BARRY W. RUBIN, M.D., P.C.
Barry W. Rubin, M.D., D.U., F.A.C.S.
31 Eighth Avenue
Brooklyn, NY 11217

January 30, 2008

Stuart Lichten, Esquire
275 Seventh Avenue, Suite 1700
New York, New York 10001

Dear Mr. Lichten,

This letter summarizes my evaluation of the medical records of Clifton Gibbon. He was requested to produce a urine sample for drug testing on February 15, 2006, for the New York City Department of Transportation. According to the records I reviewed, he has a diagnosis of benign prostatic hyperplasia which was noted in the internist's office notes of November 18, 2005.

It is my opinion with a reasonable degree of medical certainty that the benign prostatic hyperplasia could prevent the patient from producing an adequate urine specimen on demand.

I am physician licensed to practice medicine in the state of New York and am board certified in urology.

Sincerely,

Barry W. Rubin, M.D.